

AMENDED IN SENATE JANUARY 8, 2004

AMENDED IN SENATE APRIL 29, 2003

**SENATE BILL**

**No. 1021**

**Introduced by Senator Poochigian**

February 21, 2003

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An act to amend Section 16337 of, and to add Chapter 5 (commencing with Section 16500) to Part 4 of Division 9 of, the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1021, as amended, Poochigian. Trusts.

Existing law provides for the creation, modification, and termination of trusts, and regulates the acts of trustees in administering a trust. Existing law establishes provisions by which a trustee may give a notice of proposed action regarding certain matters.

This bill would revise and recast the provisions by which a trustee may give a notice of proposed action. The bill would enlarge the circumstances under which a notice of proposed action could be used, specify the form of the notice, to whom it is to be given, ~~the circumstances under which it is not to be used~~, and the methods by which a beneficiary may object to a proposed action.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 16337 of the Probate Code is amended  
2 to read:

1 16337. A trustee may give a notice of proposed action  
2 regarding a matter governed by this chapter as provided in Chapter  
3 5 (commencing with Section 16500). For the purpose of this  
4 section, a proposed action includes a course of action and a  
5 decision not to take action.

6 SEC. 2. Chapter 5 (commencing with Section 16500) is added  
7 to Part 4 of Division 9 of the Probate Code, to read:

8  
9 CHAPTER 5. NOTICE OF PROPOSED ACTION BY TRUSTEE

10  
11 ~~16500. Subject to subdivision (d) of Section 16501, a~~ A  
12 trustee may give a notice of proposed action regarding a matter  
13 governed by Chapter 2 (commencing with Section 16200) or  
14 Chapter 3 (commencing with Section 16320) as provided in this  
15 chapter. For the purpose of this chapter, a proposed action includes  
16 a course of action or a decision not to take action. This chapter does  
17 not preclude an application or assertion of any other rights or  
18 remedies available to an interested party as otherwise provided in  
19 this part regarding an action to be taken or not to be taken by the  
20 trustee.

21 16501. (a) The trustee who elects to provide notice pursuant  
22 to this chapter shall mail notice of the proposed action to each of  
23 the following:

24 (1) A beneficiary who is receiving, or is entitled to receive,  
25 income under the trust, including a beneficiary who is entitled to  
26 receive income at the discretion of the trustee.

27 (2) A beneficiary who would receive a distribution of principal  
28 if the trust were terminated at the time the notice is given.

29 (b) Notice of proposed action is not required to be given to a  
30 person who consents in writing to the proposed action. The consent  
31 may be executed at any time before or after the proposed action is  
32 taken.

33 (c) A trustee is not required to provide a copy of the notice of  
34 proposed action to a beneficiary who is known to the trustee but  
35 who cannot be located by the trustee after reasonable diligence or  
36 who is unknown to the trustee.

37 ~~(d) Notwithstanding any other provision of this chapter, the~~  
38 ~~trustee may not use a notice of proposed action in any of the~~  
39 ~~following actions:~~

40 ~~(1) Allowance of the trustee's compensation.~~

1 ~~(2) Allowance of compensation of the attorney for the trustee.~~  
2 ~~(3) Settlement of accounts.~~  
3 ~~(4) Preliminary and final distributions and discharge.~~  
4 ~~(5) Sale of property of the trust to the trustee or to the attorney~~  
5 ~~for the trustee.~~

6 ~~(6) Exchange of property of the trust for property of the trustee~~  
7 ~~or for property of the attorney for the trustee.~~

8 ~~(7) Grant of an option to purchase property of the trust to the~~  
9 ~~trustee or to the attorney for the trustee.~~

10 ~~(8) Allowance, payment, or compromise of a claim of the~~  
11 ~~trustee, or the attorney for the trustee, against the trust.~~

12 ~~(9) Compromise or settlement of a claim, action, or proceeding~~  
13 ~~by the trust against the trustee or against the attorney for the trust.~~

14 ~~(10) Extension, renewal, or modification of the terms of a debt~~  
15 ~~or other obligation of the trustee, or the attorney for the trustee,~~  
16 ~~owing to or in favor of the trust.~~

17 16502. ~~(a)~~ The notice of proposed action shall state that it is  
18 given pursuant to this section and shall include all of the following:

19 ~~(1)~~

20 ~~(a)~~ The name and mailing address of the trustee.

21 ~~(2)~~

22 ~~(b)~~ The name and telephone number of a person who may be  
23 contacted for additional information.

24 ~~(3)~~

25 ~~(c)~~ A description of the action proposed to be taken and an  
26 explanation of the reasons for the action.

27 ~~(4)~~

28 ~~(d)~~ The time within which objections to the proposed action  
29 can be made, which shall be at least 45 days from receipt of the  
30 notice of proposed action.

31 ~~(5)~~

32 ~~(e)~~ The date on or after which the proposed action may be taken  
33 or is effective.

34 ~~(b)~~ The notice of proposed action may be given using the most  
35 current Trustee Notice of Proposed Action form prescribed by the  
36 Judicial Council.

37 ~~(c)~~ If the most current form prescribed by the Judicial Council  
38 is not used to give notice of proposed action, the notice of proposed  
39 action shall satisfy all of the following requirements:

~~(1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.~~

~~(2) The notice of proposed action shall contain the statements described in subdivision (a).~~

~~(3) The notice of proposed action shall contain a form for objecting to the proposed action in substantially the form set out in the Judicial Council form.~~

16503. (a) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(b) A trustee is not liable to a beneficiary for an action regarding a matter governed by this part if the trustee does not receive a written objection to the proposed action from a beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action. This subdivision does not apply to a person who is a minor or an incompetent adult at the time of receiving the notice of proposed action unless the notice is served on a guardian or conservator of the estate of the person.

(c) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(d) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

1     16504. This chapter does not require a trustee to use these  
2     procedures prior to taking any action.

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